



## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### **Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Foreign Financial Accounts Regulations and FinCEN Report 114, Report of Foreign Bank And Financial Accounts.**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, FinCEN invites comment on a renewal, without change, of existing information collection requirements concerning reports of foreign financial accounts and FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR). This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments are welcome, and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE *FEDERAL REGISTER*.]

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0013 and the specific Office of Management and Budget (OMB) control number 1506-0009.
- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0013 and OMB control number 1506-0009.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Provisions**

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>1</sup> Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>2</sup>

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<sup>1</sup> Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

<sup>2</sup> Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

Under 31 U.S.C. 5314, the Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.” The term “foreign financial agency” encompasses the activities found in the statutory definition of “financial agency,”<sup>3</sup> notably, “a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.”<sup>4</sup> The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out 31 U.S.C. 5314.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.306, and 1010.420. Section 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR), is used to file the information required by this section. The FBAR must be filed electronically with FinCEN.<sup>5</sup> 31 CFR 1010.306(c) requires the FBAR to be filed for foreign financial accounts exceeding \$10,000 maintained during the previous calendar year. No FBAR is required to be filed if the aggregate account value of foreign financial accounts maintained during the previous calendar year is below \$10,000.

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<sup>3</sup> 31 U.S.C. 5312(b)(2).

<sup>4</sup> See 31 U.S.C. 5312(a)(1), which exempts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member.

<sup>5</sup> Formerly Form TD-F 90-22.1. FinCEN Report 114 can be completed by accessing FinCEN’s BSA E-Filing System website at <http://bsaefiling.fincen.treas.gov/main.html>.

The FBAR must be filed on or before April 15 of each calendar year for accounts maintained during the previous calendar year.<sup>6</sup>

31 CFR 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350. Specifically, filers must retain records of such accounts for a period of five years and make the records available for inspection as authorized by law.<sup>7</sup>

## **II. Paperwork Reduction Act of 1995 (PRA)<sup>8</sup>**

Title: Reports of foreign financial accounts (31 CFR 1010.350), records to be made and retained by persons having financial interests in foreign financial accounts (31 CFR 1010.420), filing of reports (31 CFR 1010.306(c)), and FinCEN Report 114 - Report of Foreign Bank and Financial Accounts (FBAR).

OMB Control Number: 1506-0009.

Report Number: FinCEN Report 114 - FBAR.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the FBAR regulations and report.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions who qualify as U.S. persons.

Type of Review:

- Renewal without change of a currently approved information collection.

Frequency: Annual.

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<sup>6</sup> In accordance with section 2006(b)(11) of Public Law 114-41 the filing due date for the report is April 15 effective as of the 2016 reporting year. The statute permits the Secretary to extend the filing due date for up to 6 months. Filers who submit complete and accurate reports to FinCEN no later than October 15 of the year the report is due will be deemed to have timely filed. FinCEN issued a statement on its website in 2016 noting the FBAR date change as a result of the statutory change. FinCEN intends to revise the FBAR regulations at 31 CFR 1010.306(c) to reflect the statutory date change in the near term.

<sup>7</sup> The penalties provided in the BSA apply to both the FBAR reporting and recordkeeping requirements.

<sup>8</sup> Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

Estimated Number of Respondents: 1,273,579 FBAR filers.<sup>9</sup>

Estimated Reporting and Recordkeeping Burden:

The estimated average burden associated with the FBAR reporting and recordkeeping requirements will vary depending on the number of reportable foreign financial accounts and the applicability of special rules provided in the regulations which provide some relief from the full scope of the reporting obligations.<sup>10</sup>

The information required to be reported on the FBAR is basic information U.S. persons will have received on account statements from the foreign financial institutions where the accounts are opened and maintained. Those statements will provide a U.S. person with the information needed to complete and file the FBAR. No special accounting or legal skills are necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR.

The special rules located at 31 CFR 1010.350(g) provide a variety of relief to FBAR filers by (1) limiting the information reported in the FBAR to the number of accounts and certain other basic identifying information where the filer has financial interest in or signature authority over 25 more reportable accounts; (2) allowing for entities to file consolidated FBARs on their own behalf and on behalf of entities for which they have a direct or indirect ownership interest over 50%; and (3) exempting reporting of foreign financial interest in accounts involving certain trust and retirement plans. However, filers reporting financial interest in, or signature authority over, 25 or more foreign financial accounts, are required to maintain a record of the detailed account information on each of their foreign financial accounts, including the account number, the

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<sup>9</sup> The total number of FBARs reported for foreign financial accounts held during calendar year 2018, and reported in 2019 is 1,273,579. Each U.S. individual or entity that maintains foreign financial accounts reportable on the FBAR can report all of their foreign financial accounts on one FBAR report.

<sup>10</sup> 31 CFR 1010.350(g).

name of the foreign financial institution that holds the account, the address of the foreign financial institution, the maximum value of the account during the calendar year, and the type of account.<sup>11</sup>

For the reasons noted above, FinCEN estimates that the approximate FBAR reporting burden will vary depending on the number of reportable foreign financial accounts, and will range from approximately 20 minutes to 90 minutes. As a result, FinCEN estimates the average reporting burden per FBAR filer will be 55 minutes.

Past estimates of the FBAR recordkeeping requirement took into account time to store paper copies of the FBAR form, and estimated that the approximate recordkeeping burden was 30 minutes. Since 2011, FBARs have been filed electronically. Electronically filing the FBAR allows a filer to save an electronic copy of the report, which satisfies the recordkeeping part of the requirement. FinCEN estimates it would take a filer five minutes to save an electronic copy of the FBAR.<sup>12</sup> In addition to maintaining a copy of the form, those filers who take advantage of the special rules provisions involving 25 or more accounts are required to maintain detailed information on those accounts. However, FinCEN believes that in most cases, such information would be maintained by filers in the ordinary course of business in the form of periodic account statements and other business records which would be maintained mostly electronically. In addition, there is no requirement in the FBAR regulations to maintain such information in any particular format.

For these reasons, FinCEN estimates that the approximate FBAR recordkeeping burden will be approximately five minutes.

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<sup>11</sup> Filers availing themselves of special rules under 31 CFR 1010.350(g)(1) and (2) involving 25 or more reportable foreign financial accounts are required to maintain and provide detailed account information for each foreign financial account, if requested by the Secretary or his delegate.

<sup>12</sup> Although filings have been electronic since 2011, this is the first renewal notice in which FinCEN has reconsidered the burden of storing reports electronically.

FinCEN estimates the total annual reporting and recordkeeping burden per FBAR filer will be one hour (55 minutes for FBAR reporting, and five minutes for FBAR recordkeeping).

Estimated Total Annual Reporting and Recordkeeping Burden: 1,273,579 hours (1,273,579 FBAR filers multiplied by one hour).

Estimated Total Annual Reporting and Recordkeeping Cost: Of the 1,273,579 FBARs filed for foreign financial accounts held during calendar year 2018, 1,209,287 were filed by individuals, and 64,292 were filed by entities. FinCEN cannot quantify the cost to individuals who file FBARs on their own behalf. For entities, FinCEN estimates the following annual burden cost: 64,292 hours X \$48.30<sup>13</sup> per hour = \$3,105,303.60.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

General Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the

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<sup>13</sup> The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/ecec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The May 2019 Bureau of Labor Statistics average hourly wage for "13-1041 Compliance Officer" is \$32.20. (\$32.20 x 1.50 = \$48.30).

information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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